IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 116 OF 2000

Uttam Dulal Mandal,]
Yerawada Central Prison, Pune.] .. Appellant (Ori. Accused)

Versus

The State of Maharashtra,]
through: Police Commissioner of Mumbai,]
Dahisar Police Chowky.] ..Respondent (Ori. Complainant)

Mrs. Prajakta Shinde, Advocate appointed for the appellant/accused.

Mrs. P.H. Kantharia, A.P.P. for the State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 29TH SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. The appellant-accused robbed and killed his friend deceased Kishore and the Court found him guilty and sentenced to suffer imprisonment for life for the offence under Section 302 of the Indian Penal Code. The Court has also

sentenced to suffer imprisonment for 7 years for the offence under Section 397 of the IPC. The Court has further sentenced to suffer rigorous imprisonment for 6 months under Section 448 of the IPC and other related orders.

2. The appellant-accused and the deceased Kishore came to Mumbai for their livelihood. The deceased was working in Zaveri Bazar Market in Mumbai. He worked with various jewellers. At the relevant time, the deceased was living in Francis Chawl at Dahisar (West). One PW3 - Bhaskar, a friend of Madhav in whose room Kishore was residing, was also sharing the said room with the deceased. Both were doing labour work at various places, basically in Zaveri Bazar. The appellant-accused also came to Mumbai and he was unemployed at the relevant time. He met the deceased Kishore. The deceased extended his cooperation and friendship. The appellant, therefore, started visiting Kishore at his business place and also at his residence i.e. the room in question. During the night also, he used to stay in the said room with Kishore. On 6th May, 1996, in the night, after preparing food, the deceased was waiting for PW-3 Bhaskar. After taking dinner together, they were watching TV upto midnight. The appellant-accused came in the room. The deceased Kishore, Bhaskar, and the accused, after chitchatting, went to bed. Room No.6 in

question is a single room. It has a small bathroom-like structure inside the room. The deceased Kishore had a steel cupboard in the room and he used to store cash and other valuables in the said cupboard. The deceased had kept ear-rings, bangles and various other ornaments for his family and kept the same in the cupboard. PW3 – Bhaskar was in monetary difficulty and, therefore, he had also handed over a gold chain to the deceased Kishore, with a request to sell the said chain. On 7th May, 1996, at about 8.30 a.m., PW3 - Bhaskar left the room and went to his shop. The deceased and the appellant were together in the room. On 7th May, 1996, the deceased did not attend the shop being a holiday. The complainant PW1 – Vikas, therefore, enquired from other persons about Kishore. He waited for Kishore till the evening. In the evening, PW1 – Vikas, telephoned one Auntie who was residing near Francis Chawl and who had a telephone. The deceased answered the phone and stated that he would come to the shop on the next day in the morning. Bhaskar came late in the night on 7th May, 1996. He found that the room was locked. The said Auntie also told Bhaskar that she did not see the deceased Kishore since evening. Bhaskar left the area and enquired from another lady who also gave him the same reply. Bhaskar, therefore, went to Virar and slept in his friend's house. On 8th May, 1996, PW1 - Vikas again waited for Kishore. He again contacted the said Auntie on telephone. Auntie informed him that the room is still locked. PW1 - Vikas got

annoyed and enquired from other persons about Kishore. He contacted Bhaskar in Zaveri Bazar. PW3 - Bhaskar also informed him that since the room was locked, he could not stay in the said room in the previous night. PW1 – Vikas, therefore, went to Dahisar in the evening. The room was locked. PW1 - Vikas, therefore, collected the key and opened the lock of the said room. He switched on the light of the room. He found that the steel cupboard was opened and the articles in the room were scattered. He found some blood marks on the wall. He saw the bed on the floor. He removed the bed-sheet from the bed and found his brother Kishore inside the bed. He further found that Kishore was bleeding from his head. The pillow, pillow covers and the bed sheet were soaked in blood. A towel was tied around the neck of Kishore. The neighbours gathered as Vikas started crying. Kishore was dead. The complainant Vikas went to Dahisar Police Station along with the said Auntie. The matter was accordingly reported to PW-10 Police Inspector Baban Shivram Kadam. The Police immediately rushed to Room No.6 of Francis Chawl. The statement of PW-1 Vikas was recorded by PSI Patil and treated as FIR (Exhibit-11). The Panchanama of the scene of offence was drawn (Exhibit-16). The clothes were seized under Seizure Panchanama (Exhibit-24) and sent to the Chemical Analyzer. As per the statement of Bhaskar, the Investigating Officer immediately contacted the friends and relatives of the accused Uttam, as the accused was last seen in the

company of the deceased Kishore. After due enquiry, they found that PW4 - Jayanta Murarimohan Mandal and his brother Bikas, who were working in Zaveri Bazar, had gone to Calcutta on 8th May, 1996, along with the accused Utam. The Police, therefore, after completing the due formalities went to Calcutta. The Police contacted PW2 – Jaydev M. Mandal, a real brother of PW4 – Jayanta. PW2 – Jaydev informed the Police that his two brothers and the accused had come to Calcutta and were staying in his house for a few days. The Police, along with Jayanta, went to the native place of accused, Uttam. PW4-Jayanta, being the relative of the accused, was able to reach the house of the accused at village Chaipat. The accused was present in the house. The Police immediately took personal search of the accused and seized some ornaments from his person. After interrogation, the accused produced before the Police, a bag containing ornaments, cash etc. The Police seized the same under Panchanama (Exhibit-25). The Police had recovered from the accused cash in the sum of Rs.8,700/- and a gold chain of Bhaskar, which was handed over to the deceased Kishore, and some other ornaments.

3. The Police brought the accused to Mumbai. During interrogation, the accused took the Police, in Room No.6, of Francis Chawl, where the incident had taken place. The accused showed a drum lying in the bathroom-like structure in

the said room. From the said drum, the accused produced before the Police a hammer, *pakkad,* a small plastic box containing some visiting cards. Those articles and the plastic box were blood stained. The said articles were seized and the Panchanama was drawn (Exhibit-18). The articles were then sent to the Chemical Analyzer. The blood of the accused was collected and sent for obtaining his blood group. The blood group of the accused was found to be "O". The blood group on the articles was found to be of group "A". The blood group of the deceased Kishore was also "A".

4. The news of the death of Kishore spread. PW8 – Yudistir Jyotindranath Adak, the father of the deceased Kishore rushed to Mumbai. The dead body of Kishore was sent for Post Mortem. PW9 – Dr. Vasant Nayaku Vanmore examined the dead body on 11th May, 1996, and certified that the death of the deceased was due to haemorrhage and shock due to head injuries associated with strangulation.

5. The accused had denied the charges. Therefore, he was tried by the Additional Sessions Judge, Greater Bombay. The defence of the accused was of total denial. The other defence was that as the deceased had cheated some customers, some of them must have had a quarrel with him. No evidence was

led by the accused. The prosecution has examined 10 witnesses and produced 12 documents with a List at Exhibit-4. The learned Additional Sessions Judge held that the accused committed murder of Kishore and further robbed ornaments and cash, from Room No.6 in Francis Chawl, Dahisar. Therefore, this Appeal against conviction by the appellant.

6. We have heard the Advocate for the appellant and the learned Public Prosecutor for the State. We have gone through the grounds of Appeal, as raised, and also through the testimony and other related documents on the record. We have re-appreciated and re-weighed the whole case, including the reasoning given by the learned Additional Sessions Judge.

7. There is no eye witness in this matter. The conviction is based on the circumstantial evidence and other corroborative and medical evidence. There is a sufficient evidence on the record to show that the death of the deceased Kishore was homicidal, which amounted to murder. The medical evidence through PW9 – Dr. Vasant Nayaku Vanmore, read with the Post Mortem Report, raises no doubt about the homicidal death of the deceased Kishore.

8. We have to see the chain of circumstances which, according to the prosecution, were sufficient to convict the accused for the crime in question. Once it is established that there was homicidal death, the second aspect would be to re-assess and re-appreciate the evidence to connect the series of events or circumstances, which would lead to the conclusion that accused has committed the murder or not and whether there is any other possible view to raise doubts, to convict or acquit the accused. PW-3 Bhaskar categorically deposed that a day prior to his death, Kishore had been seen in the company of the accused Uttam in the room in question. The accused was last seen by the witness in the company of the deceased Kishore. The theory of last seen together, cannot be a sole reason to convict any person. Still, if corroborated by other circumstantial evidence, as well as, the material, then this theory is one of the basic element, which can be relied upon to convict the person. The prosecution' scase is duly proved as rightly observed by the learned Additional Sessions Judge.

9. The next important aspect is that the accused left Mumbai immediately on the next day i.e. 8th May, 1996, without even a reservation, along with PW4 – Jayanta. There was no explanation from the accused about leaving Mumbai abruptly. The accused came to Mumbai for a job and for earning his livelihood. The deceased Kishore was providing him cooperation and friendship

and trying for a job also. They were meeting regularly in Room No.6. The accused was also frequently sleeping there because of friendship. The accused had full knowledge about the business or nature of the work which the deceased was doing. There is evidence on the record that the deceased used to keep his ornaments in the cupboard lying in the same Room No.6. Their regular staying together and chitchatting was a routine. The prosecution witness PW3 – Bhaskar, therefore, cannot be disbelieved that they were last seen together in the said room on 7th May, 1996. PW-10 PSI Kadam went to Calcutta and arrested the accused and a cash cash of Rs.8,700/-, nose-ring, ear-rings, expensive things like sprays, jeans, shirts, a golden chain and ring were recovered from the person of the accused. The Police also recovered the electricity bill/receipt concerning Room No.6 of Francis Chawl, Dahisar (Exhibit-25). We have noted that PW3 – Bhaskar identified the golden chain as the same, which he had handed over to the deceased Kishore for selling. This recovery of the ornaments from the appellant and, as no proper explanation was forthcoming or has been brought on the record by the appellant, is an another link to connect the appellant with the offence in question.

10. Another aspect, which further supports the prosecution case, is that when the appellant was brought to Mumbai, it was at his instance that the Police

had recovered the blood stained hammer, *pakkad* and a small plastic box of visiting cards from the drum which was lying in the said Room No.6. We have also noted that the recovery of the articles as per the panchanama dated 20th May, 1996 (Exhibit-18.) was missing when the first panchanama dated 8th May, 1996, as drawn. After the first panchanama was drawn, the Police had locked the room. Therefore, the whole room and the key of the said room was within the control and possession of the Police authorities. There was no chance of any false implication or implantation of these articles in the said room. The possibility cannot be ruled out that the Police, for whatever may be the reason, could not detect or discover or recover or seize these articles under their first panchanama dated 8th May, 1996, as they might not have thought of searching for these articles in the said drum. Even if there is some lacuna, that itself, according to us, cannot support the defence case specially when these articles were recovered at the instance of the accused from the room in question. This was not a public place. The recovery of these articles, therefore, cannot be overlooked.

11. As noted above, the blood samples of the accused, deceased and the blood stain samples on these articles were sent for analysis. It is recorded that the blood on these articles matches with the blood of the deceased i.e.

Group “A”. The report shows that human blood was found on the hammer and the plastic box and the blood group found on the plastic box was “A”. The blood group, which was found on the pillow, pillow covers, blanket and on the pant of the person of the deceased, which were seized by the Police at the time of Inquest Panchanama, was also of “A” group. Therefore, the prosecution has proved the articles with the blood group of the deceased. PW-2 Jaydev also deposed that the accused confessed that he had committed the murder. Even though statement of confession was held in the presence of the Police Officer who came from Mumbai, those statements were also made firstly and directly to this witness PW-2. This extra-judicial confession by the appellant to PW2 - Jaydev also needs consideration as a link to the chain of circumstances.

12. The motive, as pointed out earlier, is nothing, but to rob the money and ornaments as the accused was, at the relevant time, unemployed and in need of money. He had full knowledge about the business or the nature of business which accused was doing. The appellant, as already observed earlier, was unemployed. Therefore, the recovery of Rs.8,700/- and the other ornaments and expensive sprays, jeans and shirts, which were recovered at his instance from his place at Calcutta, also proves the prosecution case and the motive behind this crime. The initial panchanama of the spot further shows that

the body of the deceased was lying in the bed and the said cupboard was open and there were no ornaments or cash in it. The appellant, thereafter, abruptly left Mumbai along with PW4 and that too, without reservation. There was no explanation given by the appellant or brought on the record to show the reason for leaving Mumbai immediately on the next date of the incident. This may not be the sole reason to connect the guilt of the appellant, but this is definitely a circumstance which cannot be overlooked while considering the links to the events in question, basically when it lends to the offence in question. Therefore, prosecution has proved that the accused has robbed and killed the deceased.

13. The Post Mortem Report of PW9 – Dr. Vasant Nayaku Vanmore, dated 11/12th May, 1996, shows that the death must have occurred 72 hours before. The death as per the record, appears to be on 7th May, 1996. The examination of the body was done on 11th May, 1996,. The evidence of the doctor in reference to the hours of death or detecting the hours of death is not very clear. However, that itself cannot be the reason to overlook the homicidal death. PW9 – Dr. Vasant deposed that cause of the death was haemorrhage and shock due to head injury, associated with strangulation. He also deposed that weapon in question can cause such injuries. He also deposed that it was not a case of suicide.

14. The prosecution, therefore, has been able to establish that the appellant has committed robbery and murder. Therefore, the accused has rightly been convicted under Section 302 read with Section 397 & 448 of the Indian Penal Code.

15. After considering the prosecution's case, as well as, the reasoning given by the learned Additional Sessions Judge, and after hearing both the parties, we are of the view that the appellant has intentionally, recklessly, knowing fully the consequences, robbed the deceased and killed him. There is no doubt that in view of the above circumstances, as the appellant has committed the brutal murder by taking undue advantage of his friendship with the deceased, we see no reason to reduce the punishment, as imposed by the learned Additional Sessions Judge, Greater Bombay, in this matter.

16. There is no merit in the Appeal. The Appeal is dismissed. We confirm the judgment and order, as passed.

17. We quantify the fees to be paid to the Advocate appointed for the appellant and the learned A.P.P. at Rs.1,500/- for this Appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]